Yee Lee Edible Oils Sdn Bhd v Mewah Oils & Fats Pte Ltd (formerly known as Ngo Chew Hong Commodities Pte Ltd)

HIGH COURT (KUALA LUMPUR) — ORIGINATING MOTION NO R1–25-99 OF 2000
RAUS SHARIF J
24 MAY 2004

Arbitration — Arbitrator — Misconduct — Appeal filed with PORAM's Board of Appeal — Stay of prooceedings — Application for stay refused — Whether board could hear appeal in light of pending application to refer questions of law to High Court — Refusal to refer questions of law to court — Whether tantamounts to misconduct

Yee Lee ('the applicant') and Mewah Oils ('the respondent') entered into a contract for the purchase of RBD Palm Olien. The terms and conditions were pursuant to the general contract terms of Persatuan Penapis Minyak Sawit Malaysia ('PORAM'). The respondent initiated an arbitration proceeding against the applicant, claiming that the applicant had breached the contract by failing to nominate a vessel to lift the RBD Palm Olien from the destination and time stipulated by the contract. PORAM pronounced an award in favour of the respondent.

Dissatisfied with the award, the applicant filed an appeal to the Board of Appeal of PORAM and wrote to PORAM as well, requesting the arbitrators to refer the award in a form of a special case about certain questions of law for determination of the High Court. However, this was rejected by PORAM. The applicant filed an application to refer questions of law for the court's determination. The Board of Appeal proceeded with the appeal and made a decision to dismiss the appeal without waiting for the hearing of the application to the High Court.

The applicant applied to this court to set aside the order made by the Board of Appeal on the premise that it was guilty of misconduct by proceeding to hear the appeal even though PORAM was informed of the applicant's application and the members of PORAM did not adhere to the applicant's request to refer questions of law to the High Court for their determination.

Held, dismissing the application:

(1) The refusal of the Appeal Board to stay the appeal pending the hearing before the High Court did not amount to misconduct. The arbitrators had already made their decision and given an award when the applicant requested them to refer certain questions of law to the High Court. Ifthe applicant had cogent reasons, they could have moved the High Court in OS No R1–24–57–2000 to stay the hearing of the appeal to the Appeal Board, which was not done (see para 12).

(2) The applicant's complaint that the Appeal Board was in misconduct for not adhering the applicant's request to refer certain questions of law to the High Court was not sustainable. The questions of law was

addressed to the arbitrators and not to the Appeal Board. Thus, the Appeal Board could not be accused of misconduct (see para 13).

(3) There was no merit in the applicant's alternative prayer that the award be remitted to the arbitrators for consideration pursuant to s 23 of Arbitration Act 1952 (see para 14).

[**Bahasa Malaysia summary**

Yee Lee ('pemohon') dan Mewah Oils ('responden') telah membuat satu perjanjian untuk pembelian 'RBD Palm Olien'. Terma-terma dan syarat-syarat adalah menurut terma kontrak am Persatuan Penapis Minyak Sawit Malaysia ('PORAM'). Responden telah memulakan prosiding timbangtara terhadap pemohon, dengan mengadu bahawa pemohon telah mengingkar kontrak tersebut apabila gagal memilih kapal untuk mangangkut 'RBD Palm Olien' dari destinasi dan masa yang ditentukan dalam kontrak tersebut. Seterusnya, PORAM telah menurunkan suatu award yang berpihak kepada responden.

Terkilan dengan award tersebut, pemohon telah memfailkan rayuan kepadaLembaga Rayuan PORAM serta menulis kepada PORAM meminta penimbangtara merujuk award dalam cara kes istimewa berkenaan beberapa persoalan undang-undang untuk ditentukan oleh Mahkamah Tinggi. Walau bagaimanapun PORAM telah menolak permintaan tersebut. Pemohon memfailkan pemohonan untuk merujuk persoalan undang-undang untuk ditentukan oleh mahkamah. Lembaga Rayuan PORAM telah membicarakan rayuan tersebut dan membuat keputusan untuk menolaknya tanpa menunggu untuk perbicaraan permohonan ke Mahkamah Tinggi.

Pemohon memohon ke mahkamah ini untuk mengetepikan perintah Lembaga Rayuan atas alasan ia telah melakukan salah laku dengan membicarakan rayuan tersebut walaupun PORAM telah dimaklumkan mengenai permohonan pemohon serta ahli PORAM tidak menuruti permintaan pemohon untuk merujuk soalan-soalan undang-undang untuk ditentukan oleh Mahkamah Tinggi.

Diputuskan, menolak permohonan:

(1) Tindakan penolakan Lembaga Rayuan untuk menggantungkan rayuan sementara menunggu perbicaraan di Mahkamah Tinggi tidak bermakna salah laku. Penimbangtara telah membuat keputusan dan memberikan award apabila pemohon meminta mereka merujuk soalan-soalan undang-undang kepada Mahkamah Tinggi. Jika pemohon mempunyai alasan-alasan yang menyakinkan, mereka boleh memohon kepada Mahkamah Tinggi did dalam SP No R1–24–57–2000, untuk menggantungkan pembicaraan rayuan kepada Lembaga Rayuan, gagal dilakukan olehnya (lihat perenggan 12).

(2) Aduan pemohon bahawa Lembaga Rayuan telah melakukan salah laku kerana tidak mematuhi permintaan pemohon untuk merujuk beberapa persoalan undang-undang kepada Mahkamah Tinggi tidak terpakai.

Persoalan undang-undang telah ditujukan kepada penimbangtara dan bukannya kepada Lembaga Rayuan. Maka Lembaga Rayuan tidak boleh dituduh melakukan salah laku (lihat perenggan 13).

(3) Tiada merit dalam permohonan alternatif pemohon bahawa award diremitkan kepada penimbangtara untuk ditimbangkan menurut s 23 Akta Timbangtara 1952 (lihat perenggan 14).]

Notes

For cases on misconduct of arbitrator, see 1 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 1116–1118 and 1120.
For misconduct, see 13 *Halsbury's Laws of Malaysia*, para [220.127].

Legislation referred to:

Arbitration Act 1952, ss 22 (1)(b), 23, 24, (2)

Jeev Anand (How, Zul & Low) for the applicant
Pores Royan (Shook Lin & Bok) for the respondent

Raus Sharif J:

[1] This is an application by Yee Lee Edible Oils Sdn Bhd ('Yee Lee') against Mewah Oils & Fats Pte Ltd ('Mewah') pursuant to s 24(2) of the Arbitration Act 1952 ('the Act') to set aside the order made by the Board of Appeal of Persatuan Penapis Minyak Sawit Malaysia ('PORAM') on 8 September 2000, which affirmed the Arbitrator's award dated 14 April 2000. In the alternative, Yee Lee is applying to remit the award dated 14 April 2000 back to the arbitrators for their reconsideration pursuant to s 23 of the Act.

[2] The brief facts leading up to Yee Lee's application are as follows.

[3] On 7 January 1999, Yee Lee entered into a contract with Mewah for the purchase of RBD Palm Olien. The terms of the said contract were pursuant to the general contract terms of Persatuan Penapis Minyak Sawit Malaysia (PORAM).

[4] On or about December 1999, Mewah initiated arbitration proceedings against Yee Lee pursuant to cl 25 of the PORAM Rules of Arbitration and Appeal because they alleged that Yee Lee had breached the contract. The alleged breach was that Yee Lee had failed to nominate a vessel to lift the RBD Palm Olien from the destination and time stipulated by the contract.

[5] PORAM thereafter, appointed arbitrators and convened an arbitration proceeding to settle the dispute that had arisen between both parties. On 14April 2000 the arbitrators pronounced an award in favour of Mewah.

[6] Yee Lee being dissatisfied with the award filed an appeal to the Board of Appeal of PORAM pursuant to cl 25 of the contract. In addition, Yee Lee wrote to PORAM vide their letter dated 3 August 2000 requesting the arbitrators to refer the award in a form of a special case with regards to certain

questions of law for the determination of the High Court. However, PORAM rejected Yee Lee's said request vide their letter dated 10 August 2000.

[7] Yee Lee then filed an application (R1–24–57–2000) to refer certain questions of law for the court's determination.

[8] On 24 August 2000, PORAM informed Yee Lee that the Board of Appeal intended to proceed with the said appeal. Yee Lee's solicitor wrote to PORAM on the same day requesting them to refrain from proceeding with the appeal bearing in mind that their application pursuant to s 22(1)(b) of the Act has yet to be disposed. However, PORAM did not adhere to Yee Lee's request, wherein the Board of Appeal proceeded with the appeal and made a decision to dismiss the appeal on 8 September 2000

[9] It is the submission of Yee Lee that the members of the Board of Appeal are guilty of misconduct because of the following reasons:

(a) the said members proceeded with the appeal even though PORAM was informed about Yee Lee's application vide R1–24–57–2000 was still pending; and

(b) the said members of PORAM did not adhere to Yee Lee's request to them to refer questions of law to the High Court for their determination.

[10] As stated earlier, Yee Lee's application is pursuant to ss 23 and 24 of the Act. Section 23 of the Act states:

> … the High Court may from time to time remit the matters referred, or any of them, to the re-consideration of the arbitrator … .

[11] Section 24(2) of the Act states:

> Where the arbitrator or umpire has misconducted himself or the proceedings, or an arbitration or award has been improperly procured, the High Court may set the award aside.

[12] I am of the view, the refusal of the Appeal Board to stay the appeal pending the hearing before the High Court in OS No. R1–24–57–2000 does not amount to a misconduct. It must be pointed out that the arbitrators had already made their decision and given their award when Yee Lee requested them to refer certain questions of law to the High Court. When the arbitrators refused to entertain the request, Yee Lee filed OS No. R1–24–57–2000 and then requested the Appeal Board not to hear the appeal. To me, there was nothing improper which amount to misconduct for the Appeal Board to decline to stay the appeal. Indeed, if Yee Lee has cogent reasons, they could have moved the High Court in OS No. R1–24–57–2000 to stay the hearing of the appeal to the Appeal Board pending the determination of OS No. R1–24–57–2000. But this was not done.

[13] With regard to the complaint raised by Yee Lee that the Appeal Board did not adhere to Yee Lee's request to refer certain questions of law to the High Court, it must be pointed out that the questions of law was addressed to the arbitrators and not the Appeal Board. As such, the Appeal Board cannot be accused of misconduct in not adhering to Yee Lee's said request to the arbitrators.

[14] I am also of the view that there no merit in Yee Lee's alternative prayer that the award be remitted to the arbitrators for their consideration pursuant to s 23 of the Act. My reasons are as stated in Yee Lee's application in OS No. R1–24–57–2000 which was heard together with this application.

[15] In conclusion, I am of the view that there is no merit in this application. Accordingly, the application is dismissed with costs.

Application dismissed.

Reported by Jeyanthi Mala